

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of Section 255 of the)
Telecommunications Act of 1996)
)
Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons with Disabilities)

WT Docket No. 96-198

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Comments of Ericsson Inc.

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Summary of Position

Ericsson supports the concept that telecommunications equipment and CPE should be accessible and/or compatible to persons with disabilities to the extent possible. In crafting rules and/or policies to implement Section 255 the FCC should be guided by the following principles: (1) manufacturers should have sufficient flexibility to develop products which are accessible and/or compatible without making every product accessible and/or compatible; (2) the Commission should encourage, rather than inhibit, the continued acceleration of the deployment of new technologies and/or services; and (3) the best means of achieving the goals Section 255 was designed to accomplish is for the Commission to encourage voluntary agreements among manufacturers, service providers and members of the disability community.

Because Congress specifically gave the Commission a role in the development of accessibility guidelines for telecommunications equipment and CPE, it should not simply adopt the guidelines established by the Access Board. The FCC should initiate a NPRM to evaluate the Access Board's guidelines to ensure that they are appropriate for the unique and dynamic telecommunications market. Factors which may distinguish telecommunications from other industries to which the ADA applies include, but are not limited to: (1) the technical complexity of new telecommunications systems and protocols; (2) the need for different types of networks to interconnect with one another; (3) the speed with which new technology is being developed; (4) the rapid introduction of new equipment, products and services to take advantage of technology development; (5) the

relatively long lead time necessary to design new telecommunications equipment and CPE; (6) the cost to develop new telecommunications equipment and CPE; (7) the pressure to pare costs down to make telecommunications equipment and CPE available to consumers at the lowest possible prices; (8) the relatively short “shelf life” of telecommunications equipment and CPE; and (9) the fierce nature of competition within telecommunications markets.

Rules should be adopted to establish a process by which complaints brought under Section 255 are handled and to establish specifically penalties for violations of Section 255. Until accessibility guidelines are adopted and reviewed by the FCC it is somewhat premature to comment on the best means for the FCC to exercise its jurisdiction.

However, technical rules and/or standards should not be adopted since that process takes a long time which can delay deployment of accessible/compatible devices in the marketplace. The FCC should establish a policy statement which provides all affected parties with some guidance on its expectations with regard to Section 255. Establishment of a policy statement should increase compliance with the goals of Section 255 and reduce the number of frivolous complaints brought under Section 255. Interim complaint procedures should not be adopted until guidelines are adopted and reviewed. This is likely to increase the number of complaints filed and unnecessarily consume substantial resources of the Commission, the manufacturing community and the public.

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Comments of Ericsson Inc.

Ericsson Inc. ("Ericsson"), by its attorney, hereby submits its comments in the *Notice of Inquiry*¹ in the above-captioned matter. Ericsson is a manufacturer of telecommunications systems and equipment for wireless and wireline networks. Ericsson has developed telecommunications equipment which can be used by persons with disabilities. It has also been actively involved in organizations which have continuing dialogue with members of the disability community and whose goal is to make telecommunications products accessible to individuals with disabilities. Due in part to the recognition of Ericsson's efforts in this regard, it was selected to be a full member of the Telecommunications Access Advisory Committee ("TAAC") which has been established

¹ *In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons with Disabilities, Notice of Inquiry*, Docket No. 96-198, FCC 96-382, __ Rcd __ (September 19, 1996) (hereinafter "NOI").

by the Architectural and Transportation Barriers Compliance Board (“Access Board”) to assist in developing accessibility guidelines for telecommunications equipment and CPE required pursuant to Section 255 of the Telecommunications Act of 1996 (“1996 Act”).²

Except as otherwise noted, Ericsson’s comments in this NOI are limited expressly to equipment issues rather than service issues. In support of its comments, Ericsson states as follows:

I. Introduction

Section 255 of the 1996 Act requires that manufacturers of telecommunications equipment and CPE make products which are accessible to persons with disabilities, if readily achievable. To the extent such equipment can not be made accessible, Section 255 requires manufacturers to make telecommunications equipment and CPE compatible with existing peripheral devices or specialized CPE, if readily achievable.

The ultimate goal of Congress in promulgating Section 255 is laudable and Ericsson supports the concept that telecommunications equipment and CPE should be made accessible to persons with disabilities to the extent possible. However, in crafting rules and/or policies to implement Section 255, the Commission should be guided by certain principles.

First, any action taken by the Commission should ensure that manufacturers have sufficient flexibility to develop products which are accessible and/or compatible without making every product accessible and/or compatible. Second, any action taken by the

² Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (hereinafter “1996 Act”).

Commission should encourage, rather than inhibit, the continued acceleration of the deployment of new technologies and/or services. Third, any action taken by the Commission should encourage voluntary agreements among manufacturers, service providers and members of the disability community with regard to the means by which Section 255 is implemented.

Ericsson foresees many practical problems in implementing Section 255 due in large part to the overwhelming breadth of Section 255. For example, the scope of disabilities to which Section 255 applies³ combined with the thousands of pieces of equipment which will be classified as “telecommunications equipment” or “CPE” will make it impossible for every piece of telecommunications equipment or CPE to be accessible or compatible for every type of disability. As a result, unless a reasoned approach is taken, Section 255 implementation could have a chilling effect on the development of new innovative telecommunications services and equipment. Ericsson’s overall view is that a regulatory scheme to implement Section 255 should not be based on detailed regulation or adoption of specific technical standards. Instead, Ericsson believes a regulatory scheme which requires continual, periodic and meaningful dialogue between representatives of manufacturers and the disabled community which will lead to voluntary solutions to the problems Section 255 is designed to achieve, will best serve the public interest. The regulatory scheme must, of course, hold parties to certain reasonable

³ At paragraph 13 of the NOI the Commission notes that “disability” in the context of the ADA is defined as a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

timetables to ensure that progress is made. It must also have an enforcement component to ensure that legitimate disputes can be resolved and appropriate remedies fashioned.

II. FCC Jurisdiction

In the NOI the FCC properly acknowledges that Section 255(f) provides it with the exclusive authority to resolve complaints which arise under Section 255 and that Section 255(e) requires the Access Board to develop "...guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Commission." The NOI requests comment on policy reasons to exercise various aspects of the Commission's authority⁴ and what is the most appropriate way for the Commission to work with the Access Board to develop guidelines.⁵

Ericsson asserts that the Commission's role should be to evaluate the guidelines promulgated by the Access Board and then to determine the best method of enforcing compliance with Section 255. Though the Access Board is an independent regulatory agency with expertise in matters relating to "accessibility" for buildings and similar physical plants, it is not expert in telecommunications matters.⁶ The Commission is the agency with expertise in telecommunications. The fact that the Access Board sought the Commission's assistance to facilitate its statutory obligation to develop guidelines under

⁴ NOI at para. 7.

⁵ *Id.* at para. 35.

⁶ Other than its newly added responsibility under the 1996 Act, the Access Board has responsibility to enforce the Architectural Barriers Act to ensure there is accessibility in [physical] facilities built, altered or leased using certain Federal funds. It also has responsibility under The Americans with Disabilities Act to develop ADA Accessibility Guidelines, minimum accessibility guidelines for places of public accommodation, commercial facilities, state and local government facilities, and transportation vehicles and facilities covered under the ADA.

Section 255⁷ and Congress specifically required the Access Board to develop guidelines in “conjunction with the Commission” is proof that the Commission was intended to have a significant role in the implementation of Section 255.

Because Congress intended for the FCC to have a role in the development of guidelines, the FCC should not merely adopt the guidelines promulgated by the Access Board. Instead, after the Access Board completes its task, the FCC should initiate a proceeding to ascertain whether the guidelines for telecommunications equipment and CPE are reasonable in the context of the circumstances which are unique to the telecommunications industry.

Though Commission staff personnel attend meetings of the TAAC, that level of FCC participation falls short of “full Commission” participation which would satisfy the Congressional mandate requiring that the Access Board develop guidelines “in conjunction” with the Commission. Furthermore, though the TAAC is composed of members from a variety of interested constituencies, including the disabled community, manufacturers, service providers and certain trade associations, the TAAC is not comprised of all parties that might be affected by the guidelines or rules/policies which may be adopted by the Commission. There are a variety of manufacturers of telecommunications equipment and CPE who do not participate in the TAAC, especially small companies that might be affected to a greater extent by Section 255 than large companies. As a result, it is imperative that after the Access Board develops guidelines

⁷ NOI at para. 4, n. 3.

for telecommunications equipment and CPE, the Commission should evaluate the guidelines and decide whether and to what extent the guidelines need to be modified in the context of the competitive telecommunications environment.

It is premature to submit detailed comments on how the Commission should exercise its jurisdiction until such time as guidelines are promulgated. However, as a general matter, Ericsson believes the Commission should adopt a policy statement which provides manufacturers and others with information that will enable them to better understand the scope of their respective obligations, duties and/or burdens of proof. Taking this course of action has a number advantages. First, a policy statement will serve as a baseline for compliance which will serve to eliminate frivolous complaints filed against manufacturers. Second, adoption of a policy statement rather than a detailed set of technical rules for each piece of telecommunications equipment and CPE will provide manufacturers with greater flexibility in the design process which, in turn, will result in accessible and/or compatible products being deployed more quickly in the marketplace.

III. Definitions of Accessible, Compatible and Readily Achievable

Defining the terms “accessible”, “compatible” and especially “readily achievable” are crucial to implementation of Section 255. Though these terms may be defined in the Access Board’s guidelines, they may be viewed differently in the context of the telecommunications environment. Specifically, what is readily achievable (i.e., what is “easily accomplishable and able to be carried out without much difficulty or expense”) may be different in the context of telecommunications as opposed to the context of the

ADA. Factors which characterize the telecommunications market which may not exist or be germane to entities or facilities subject to the ADA are (1) the technical complexity of new telecommunications systems and protocols; (2) the need for different types of networks to interconnect with one another; (3) the speed with which new technology is being developed; (4) the rapid introduction of new equipment, products and services to take advantage of technology development; (5) the relatively long lead time necessary to design new telecommunications equipment and CPE; (6) the cost to develop new telecommunications equipment and CPE; (7) the pressure to pare costs down to make telecommunications equipment and CPE available to consumers at the lowest possible prices; (8) the relatively short “shelf life” of new telecommunications equipment and CPE; and (9) the fierce nature of competition within telecommunications markets.

Based on the dynamic nature of the telecommunications market, it may be imprudent to attempt to create hard and fast definitions to cover the full range of configurations that might exist for telecommunications equipment and CPE. Instead, the Commission should consider a more generalized approach which takes into consideration the unique factors applicable to the telecommunications industry. Among the principles that should be recognized are: (1) not every piece of telecommunications equipment or CPE can be made accessible or compatible for every disability; (2) some telecommunications equipment and CPE may not be capable of being made accessible or compatible at all; (3) excessive and overbroad government regulation may have a chilling effect on the continued ability of equipment manufacturers and telecommunications service

providers to offer new, innovative telecommunications services to the general public at highly competitive prices.

IV. Complaint Process

As noted above, Section 255(f) vests the Commission with exclusive jurisdiction over any complaint filed pursuant to Section 255. Also, Section 4(i) of the Communications Act provides the FCC with authority to "...perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." Despite the fact that the Commission's general power to resolve complaints under Section 255 is not in dispute, Ericsson asserts that it is premature to submit specific comment on how to handle complaints or enforce Section 255 since no guidelines have yet been adopted. Comment on the issue of what is the best method of handling complaints will depend in large part on the nature and substance of the guidelines which are ultimately adopted.

Notwithstanding the foregoing and because the Commission clearly has jurisdiction to enforce Section 255, it is necessary for the Commission to establish specific rules and procedures pursuant to the Administrative Procedure Act which provides the process for exercising such jurisdiction and specific penalties for conduct determined to be in violation of Section 255. Failure to conduct a notice and comment rulemaking proceeding relative to procedures and penalties for violations of Section 255 would deprive equipment manufacturers their right to procedural due process of law.

Ericsson opposes the adoption of interim complaint procedures at this point in time for two reasons. First, it would be inequitable to hold manufacturers liable now for compliance with Section 255 when no party knows precisely what guidelines will be adopted or the standards to which manufacturers will be held. Second, promulgation of complaint procedures now will simply open the floodgates to a series of speculative complaints alleging violations of Section 255 which will unnecessarily tax the resources of the Commission, industry and the public. As discussed above, after accessibility guidelines are developed for manufacturers it is necessary and appropriate to conduct a proceeding to establish procedures and penalties for failing to comply with Section 255.

V. Manufacturers Subject To Section 255

The NOI seeks comment on a number of issues related to which manufacturers should be subject to Section 255. Specifically, the Commission asks for comment on the impact of differing national standards on the complaint process⁸; how component suppliers or resellers should be treated in the context of Section 255⁹; and whether the financial size of a company should be relevant to a manufacturer's responsibility under Section 255¹⁰.

With regard to differing national standards and/or the size of the company in question, Ericsson is of the opinion that any policies or rules adopted by the FCC to implement Section 255 should be applied equally to all companies. That is, no company should be exempt from compliance based on its size (financial or otherwise) or differing

⁸ *Id.* at para. 11.

⁹ *Id.* at para. 12.

¹⁰ *Id.* at para. 18.

national standards. If telecommunications equipment and CPE subject to the accessibility guidelines is deployed in the U.S. it should be subject to whatever rules are applicable.

With regard to component suppliers or resellers, Ericsson is of the view that the “manufacturer” of telecommunications equipment or CPE should be the party that obtains any necessary equipment authorization or is otherwise legally responsible for compliance with FCC rules (other than Section 255 compliance) for the piece of telecommunications equipment or CPE in question. For telecommunications equipment or CPE that does not require an equipment authorization, the “manufacturer” for purposes of Section 255 should be the entity that is responsible for final assembly of the piece of telecommunications equipment or CPE so it can be deployed in, or be used as part of, a telecommunications system.

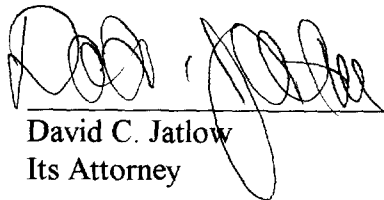
VI. Conclusion

Ericsson agrees that telecommunications equipment and CPE should be made accessible or compatible to the extent readily achievable for persons with disabilities, not only because the law now requires it, but because it is right. It will serve to enhance the quality of life for all Americans. However, Ericsson believes that the most efficient manner to make telecommunications equipment and CPE accessible or compatible for persons with disabilities is to set up a regulatory regime which encourages dialogue between the affected parties designed to lead to mutually agreed upon processes for making telecommunications equipment and CPE more available. Accordingly, while the Commission should establish rules relative to the processes to implement its jurisdiction to

resolve complaints brought under Section 255, it should avoid adoption of hard and fast technical rules or standards which may have a tendency to delay deployment of accessible/compatible equipment to the detriment of the public.

Respectfully submitted,

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